



# REPORT OF THE INCEPTION MISSION OF SUPPORT TO MIREME ON THE ON-GRID SYSTEMS LEGAL FRAMEWORK REVIEW

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Supporting the Business Environment for  
Economic Development (SPEED+)

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# 1. Introduction

The Electricity Component of the SPEED+ Project funded by USAID includes the following subcomponents:

1. Legislation, regulations and negotiation support for on-grid Independent Power Producers (IPPs);
2. Legislation and regulatory environment for off-grid IPPs;
3. Support to the independent regulator;
4. Strengthening EDM.

For this purpose, SPEED+ hired a team of consultants to initiate the work under subcomponent 1 – Legislation, regulations and negotiation support for on-grid IPPs, encompassing the following activities:

1. Implementation of REFIT;
2. Negotiation and legal support to IPPs – pilot project;
3. Support to the update of legislation currently applicable to on-grid IPPs.

Following several meetings with the Legal Office (LO) of MIREME on the assistance to be provided by SPEED+ to LO, and following a request sent by MIREME LO to SPEED+ concerning the Draft Work Plan to support the Legal Area, a team – coordinated by Manuel Ruas, the Portfolio Manager – was hired. The team included the following consultants:

- David Waltenberg
- Taciana Peão Lopes

The purpose of this report is to present a summary of the work carried out during the visit of consultant David Waltenberg to Maputo, which took place from August 1-11, 2017. The report comprises the following sections:

- Scope of work
- Meetings held and contacts made during the mission
- Documents prepared during the mission
- Outcomes
- Next steps

## 2. Scope of Work ("SOW")

1. Implementation of REFiT
2. Negotiation and legal support to IPP projects – Pilot Project
3. Support to the review of legislation applicable to on-grid IPPs

### 3. Meetings held and contacts made during the mission

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
July 31	August 1	August 2	August 3	August 4	August 5	August 6
	<u>Kick-off Meeting:</u> Sérgio Chitará Ashok Manuel David Taciana Armando	<u>Consultant internal meeting:</u>  Manuel David Taciana	<u>Presentation of work activities to USAID/SPEED+:</u>  Amanda Sérgio Chitará Ashok Manuel David Taciana	<u>Meeting with MIREME/DNE/FUNAE presentation of activities:</u>  MIREME Manuel David Taciana	<u>Consultant internal meeting to prepare and specify work activities:</u>  Manuel David Taciana	
			<u>Short meeting with AFDB and ARENE:</u>  Manuel David Taciana			
August 7	August 8	August 9	August 10	August 11	August 12	August 13
<u>Meeting with MIREME: detailed presentation of activities and training:</u>  Manuel David Taciana	<u>Internal meeting of the team to define areas of intervention and prepare the mission report:</u>  Manuel David Taciana	<u>Meeting with The World Bank:</u>  Manuel David	<u>Meeting with Norwegian Embassy (NVE):</u>  Armando Manuel David	<u>Stock-taking meeting with USAID:</u>  Amanda Armando Manuel David		
	<u>Presentation MIREME meetings outcomes to USAID/SPEED+:</u>  Sérgio Chitará	<u>Preparation and review of the 1<sup>st</sup> Draft Mission Report:</u>				

	Ashok Armando Manuel David Taciana	Manuel Taciana David				
	<u>Contacts with NVE on potential collaboration in the review of the Electricity Law:</u> Taciana					

## 4. Documents prepared during the mission

The mission reviewed several documents, reports, and legislation, which were used for the preparation of this mission report and of the following documents:

- Annex 1 – PPT presentation to USAID/SPEED+
- Annex 2 – Training/Capacity-building modules
- Annex 3 – Support to the update of legislation applicable to on-grid IPPs
- Annex 4 – Implementation of REFIT
- Annex 5 – Negotiation and legal support to IPP projects – pilot project

## 5. Outcomes

Since the main purpose of the mission was to establish the work basis with LO of MIREME, we believe this objective was fully met.

In fact, a Draft Work Plan for the work of SPEED+ was agreed with LO, intended to support the Legal Area and laid upon four (4) core components:

1. Component 1 – Economic/Financial, Legal/Regulatory, and Technological Capacity-Building/Training;
2. Component 2 – Support to the Update of Legislation Applicable to on-grid Independent Power Projects and/or IPPs;
3. Component 3 – Implementation of REFIT;
4. Component 4 – Negotiation and Legal Support to IPPs – pilot project.

The above components are, in turn, subdivided into several subcomponents, identify below in a summarised manner and fully described in Annexes 1, 2, 3, and 4 of this report.

### *Component 1 – Economic/Financial, Legal/Regulatory, and Technological Capacity Building/Training*

Economic/financial, legal/regulatory, and technological capacity building/training is to be provided to LO team members, as well as to others as appointed by LO

It was agreed that officials from other ministries and entities linked to foreign investment should also be present, including representatives from MEF, MITADER, Bank of Mozambique, APIEX, FUNAE, EDM, and other relevant parties.

This component is divided into three (3) modules, comprising various themes described in more detail in Annex 1:

- A. Economic/Financial Module
- B. Legal/Regulatory Module
- C. Technological Module

Logistics related to the Modules in Component 1 (Capacity-building/Training) shall be the responsibility of SPEED+, which will provide information about session venue, date and time.

In principle, each Module should take 1-3 days and be provided to 20-40 participants.

### *Component 2 – Support to the Update of Legislation Applicable to On-grid Independent Power Projects and/or IPPs*

This component is crosscutting in relation to the others and its main objective is to harmonise legislation in the Electricity sector.

Thus, the main activities to undertake under this component are, namely:



- Establishment of a working group with LO to coordinate the collection, analysis, comparison, and preparation of legal instrument drafts, in which SPEED+, in addition to other tasks, shall support and advise LO in working group management and leadership, namely by preparing meeting minutes and all other work required to the adequate operation of the group. This working group should be subsequently divided into as many subgroups as the LO may indicate as necessary to review specific areas, e.g. REFIT.
- Diagnosis of possible gaps/inconsistencies – collection, mapping and review of the sector’s legislation to identify overlaps and gaps, and specifically between the Electricity Law, Electricity Regulations (Concession Regulations), PPP Law and Regulations, REFIT Decree, Investment Law and Regulations, Code of Tax Benefits, the new ARENE Law, *inter alia*, with a view to harmonisation;
- Draft of the revised Electricity Law and other related instruments. This work shall comprise the following phases:
  - ✓ Drafting of amendment proposals and of legislative harmonisation;
  - ✓ Discussion with MIREME and other stakeholders (including partners);
  - ✓ Public discussion of proposals;
  - ✓ International seminar.

SPEED+ will be in charge of Component 2 logistics, namely the drafting of minutes of meetings, work sessions, print-outs, etc. SPEED+ will articulate with LO to identify the appropriate venues for work sessions.

### *Component 3 – Implementation of REFIT*

The purpose of this component is to carefully review the REFIT framework approved by Decree 58/2014, of October 17, with a view to preparing implementation guidelines and a tariff review.

Such analysis may not be undertaken out of the context of Component 2 (Support to the Update of Legislation Applicable to on-grid Independent Power Projects and/or IPPs) and, with this in mind, the activities to be carried out by SPEED+ in collaboration with LO include:

- Establishment of a working subgroup working in close collaboration with the Component 2 working group, and SPEED+ will support and advise the LO in subgroup leadership and management;
- Review of Decree no. 58/2014, “Guidelines”, and other documents and initiatives related to the matter at hand, including GETFiT;
- Definition of proposals for the effective implementation and operationalisation of REFIT;
- Preparation of drafts of new legal instruments;
- Public discussion of the drafts;
- Submission of drafts to the relevant authorities.

The logistics of Component 3, and namely the preparation of work and meeting minutes, print-outs, work sessions, and other aspects, will be the responsibility of SPEED+, which will consult with LO to identify the most appropriate venue for work sessions.

#### *Component 4 – Negotiation and Legal Support to IPPs – pilot project*

The main objective of this component is to draw lessons/examples from previous or ongoing cases of negotiation of concession contracts and power purchase agreements, and the main expected outcomes are:

- ✓ Preparation of a procedures template to negotiate power projects;
- ✓ Preparation of a model concession and/or licencing contract, as appropriate for the context of the Electricity Law review (Component 4):
- ✓ Preparation of a model power purchase agreement.

To achieve the above objectives, the activities proposed include:

- Mapping of existing IPP projects, identifying points of intersection;
- Comprehensive analysis of approved projects and legal instruments applicable;
- Preparation of a Report covering the background of and guidelines for approved projects;
- Technical assistance to LO team in negotiation of ongoing projects, taking the aforementioned guidelines into consideration.

SPEED+ will be in charge of the logistics related to Component 4 activities, namely the preparation of minutes, print-outs, work sessions, etc., articulating with LO on the most appropriate venue for work sessions.

From the explanation above it becomes apparent that the components are intrinsically interlinked and, for optimal results, it is advised that Component 1 – Capacity-building/Training follows the implementation of the other components. In fact, the Capacity-building/Training activities will benefit from the legal/regulatory analysis to be undertaken under any of the other components.

Due to the nature of some of the project's activities, as described in this Draft Work Plan, SPEED+ believes that entering into a Confidentiality Agreement with MIREME will be crucial to ensure the confidentiality of some information exchanged for purposes of the support provided to the Legal Area of LO.

#### Coordination with potential partners

Lastly, the positive outcomes of the initial meetings and discussions between the mission and potential partners should be noted. These contacts were aimed at the coordination of partner and SPEED+ activities, in order to prevent overlaps or even conflicting activities. In this regard, meetings were held with:

- African Development Bank – AfDB
- The World Bank

- Norwegian Embassy, on NVE projects

## 6. Next Steps

The following actions are key to implement the Draft Work Plan with SPEED+ to Support the Legal Area:

- Send a letter to MIREME including the Draft Work Plan under the SPEED+ programme funded by the USAID for the energy sector, including Support to the Legal Area, and signature of the Confidentiality Agreement;
- Organise and propose the training dates, as per the modules in Component 1 – Capacity-building/Training, considering that the international consultants should be present;
- Request the establishment of the working group provided in Component 2 – Support to the Update of Legislation Applicable to on-grid IPPs.

In parallel, the collaboration with potential partners should be continued, including those mentioned above and others that might be involved in activities relevant to the operation of USAID/SPEED+, including KfW concerning GETFiT.

# Annex 1

## Capacity-building/Training

### Economic/Financial Module

#### i. Project finance

- Cash generation to repay the required long-term debt service;
- Legal framework required to harmonise different interests and approaches to risk-taking; and
- Review of documentation.

#### ii. Internal rate of return – IRR

- Access to financing from the market;
- Nature of competitive income over time;
- Simple and compounded interest rates;
- Adaptation to risks; and
- Adaptation to productivity increase.

#### iii. Public-private partnerships (PPP) in the electricity sector – models and structures

- Review and discussion of cases of interest to stakeholders on various issues. Every case shows the need for an adequate legal framework to prevent conflicts and address them when they occur.

#### iv. Direct contracting

- To avoid collusion between participants to the detriment of the best public interest, the law often requires public procurement of goods and services to be made by competitive bidding. Legislation also provides exceptions to the rule, i.e. cases in which such public procurement can be made without a tender.

#### v. Double taxation agreements

- Taxation imposed by the local government and subsequently by the home-country of the entrepreneur may render a PPP unfeasible or very expensive. So, many countries entered into covenants to avoid or mitigate double taxation (the Double Taxation Agreements, or DTAs). Such agreements may cover a large set of taxes, of which only those more relevant to PPP feasibility will be mentioned in this section.

#### vi. Sovereign guarantees and risk mitigation

- Sovereign guarantees seek to mitigate risks for financiers related to a project they finance.

#### vii. Preservation of natural resources vs. nationalisation

- What can be done to allocate a reasonable share of the national production capacity to the energy sector?

## Legal/Regulatory Module

### 1) Rationale – Characteristics of Activities

- Strategic importance: infrastructure; environmental intervention; capital-intensive; medium- to long-term return; attractiveness dependent on legal stability
- Electricity sector – activity chain: production, transmission, distribution, commercialisation, consumption
- Energy sources: oil, natural gas, shale petroleum, coal, nuclear, wind, solar, small hydropower schemes, biomass, biofuels

### 2) Legislative and regulatory framework for the energy sector

- Competencies and hierarchy of governmental powers and agents: MIREME and ARENE
- Matrix of rights and obligations of sector agents and Public Power
- Framework and awards: concession, authorisation, licences

### 3) Regulatory Authority – ARENE

- Mandate
- Structure and organisation

- Political, technical, and financial independence
- Administrative procedures: Oversight, Guidance, Punitive, Decision-making
- Sector conflict resolution
- Interface with government bodies, investors, consumers, and other stakeholders
- Processes and procedures

#### 4) ARENE – Operation

- Impartiality in relation to government, investors, consumers
- Technical solutions considering government guidelines, economic/financial balance of enterprises, consumer needs, environmental preservation
- Legal stability

#### 5) Regulatory Activity – Preparation and Review of Legislation

- Reconcile technical, economic/financial/accounting, and legal contents
- Regulatory responsibility: Regulatory Impact Assessment - RIA
- Publicity and democratic participation: Public consultations
- Motivation and transparency

#### 6) Penalties

- Infractions – classification
- Punitive process: guarantees to sector agents (adversarial and full defence), dual level of decision
- Sanctions – intensity criteria (proportionality and reasonability)

#### 7) Project Implementation

- Contractual aspects: commercialisation, access to electricity systems (use/connexion), financing
- Environmental aspects
- Real estate aspects (land tenure)
- Financial aspects: charges, fees, tariffs

## 8) International Experience

- Models, challenges, lessons

# Technological Module

## 1. Power characteristics

- Electricity measures (kW, kWh, kV, kVA, Hz, etc.)
- Types of energy (active and reactive)
- Types of current (DC and AC)
- Synchronisation
- Contracting forms (take or pay, firm energy and/or power)

## 2. Generation or production

- Chemical/physical generation process (transformation from other types of energy into electricity)
- Conventional sources: hydro, thermal (nuclear, coal, wood, oil, gas)
- Renewable sources: biomass, wind, solar, in addition to hydro
- Other sources: tidal, geothermal, industrial steam
- Generation unit and equipment (turbine, regulator, etc.)
- Purpose: self-consumption (contiguous or remote); sale to third parties
- Connexion: to the grid, to the distribution network, directly to consumption
- Protection (safety)
- Prices and/or tariffs

## 3. Transmission

- Physical transmission of electrical impulses; dispatch
- Transformation: substations and their equipment (bay, breakers, etc.)
- Lines: high or extra-high voltage; DC or AC
- Connexions: to generation, to grid, or to consumption
- Scope: domestic/international (export/import)
- Protection (safety)
- Connexion and/or system use prices and/or tariffs



#### **4. Distribution**

- Conversion: distribution substations; grid transformers
- Distribution grid: low voltage; technical standards; equipment
- Connexion to consumption units
- Protection and metering equipment
- Consumer categories: residential, commercial, industrial, public lighting, irrigation, etc.
- Connexion and/or system use prices and/or tariffs
- Invoicing: monomial or binomial; regularity
- Discontinuation of supply (failure to pay; energy theft; unauthorised resale)

#### **5. Commercialisation**

- Dichotomy between physical (energy) and financial (purchase and sale/payment for energy)
- Responsibility for contracting
- Relationship with the generating, transmitting, distributing, and consuming entities
- Invoicing and protection against defaulting

# Annex 2

## Support to the update of legislation applicable to on-grid IPPs

SUPPORT TO THE UPDATE OF LEGISLATION APPLICABLE TO ON-GRID IPPs					
STAGES	ACTIONS	ACTIVITIES	RESPONSIBLE ENTITY	DURATION	OBS.
1	Establishment of the WG	<ul style="list-style-type: none"> <li>• Interinstitutional contacts by MIREME to establish the WG</li> <li>• Appointment to the WG</li> <li>• Appointment to sub WGs for the various areas of work</li> </ul>	MIREME	1 week	
2	Installation of the WG	<ul style="list-style-type: none"> <li>• Presentation of objectives, guidelines and work timeline</li> <li>• Presentation of the WG mandate</li> <li>• Presentation of pre-existing studies related to the work object (WB and Ashley Brown reports, <i>inter alia</i>)</li> <li>• Division of responsibility between WG and sub WG members</li> </ul>	MIREME GT SPEED+	1 week	

3	Internal review	<ul style="list-style-type: none"> <li>• Review of legislation in force and pre-existing studies by WG members</li> <li>• Presentation of assessments and reviews of legislation in force and pre-existing studies by WG members</li> <li>• Formulation of proposals for legislation amendment by WG members</li> <li>• Joint work with NVE (Norway) and sharing of reviews and findings</li> </ul>	GT SGT SPEED+ NVE	2 weeks	
4	WG discussions and findings	<ul style="list-style-type: none"> <li>• Collection of sub WG proposals</li> <li>• Joint presentation of assessments, reviews, and proposals of WG members</li> <li>• Debates on proposals and selection of those adopted by the WG</li> <li>• Preparation of the Report on proposals and alternatives within the WG and sub WGs</li> </ul>	GT SGT SPEED+ Other donors working in the field	2 weeks	
5	Interaction of WG and MIREME	<ul style="list-style-type: none"> <li>• Presentation of WG proposals to MIREME</li> <li>• Assessment of WG proposals by MIREME</li> <li>• Discussion between MIREME and WG to identify the proposals selected</li> </ul>	MIREME GT SPEED+ Other donors working in the field	2 weeks	

6	Preparation of draft of legal instrument review	<ul style="list-style-type: none"> <li>• Preparation of the new law draft based on proposals from stages 4 &amp; 5</li> <li>• Assessment of the draft by the WG</li> <li>• Review of the draft by MIREME and subsequent assessment by the WG</li> <li>• Submission and discussion of the new legislation draft by MIREME with other relevant entities of the Executive (as well as the Legislative and the Judicial, if deemed appropriate and/or convenient)</li> </ul>	MIREME GT SPEED+ Other donors working in the field	1 week	
7	Public consultation	<ul style="list-style-type: none"> <li>• Dissemination of the new legislation draft to the public, formulation of criticism and suggestions</li> <li>• Public sessions open to all stakeholders for presentation and discussion of the new Law, by region (Northern, Central, Southern)</li> <li>• International seminar for presentation and discussion of the new draft Law</li> <li>• Preparation of the Report on the discussions and suggestions put forward during the Public</li> </ul>	MIREME GT SPEED+ Other donors working in the field	2 weeks	

		Consultation, including proposal acceptance or rejection and reasons thereof			
8	Submission of the instrument to Cabinet and monitoring the procedures for approval of the new Law by the Cabinet, for submission to the Parliament.	<ul style="list-style-type: none"> <li>• Review of the new draft Law in light of the Public Consultation outcomes</li> <li>• Final intragovernmental review of the new draft Law</li> <li>• Appraisal and decision by the Cabinet of the new draft Law and referral for appraisal by the Legislative</li> </ul>	MIREME GT SPEED+ Other donors working in the field	To be defined	

# Annex 3

## Implementation of REFIT

IMPLEMENTATION OF REFIT					
STAGES	ACTIONS	ACTIVITIES	RESPONSIBLE ENTITY	DURATION	OBS.
1	Establishment of the sub WG	<ul style="list-style-type: none"> <li>Definition of objectives, guidelines, attributes and activities of the WG</li> <li>Review of Decree no. 58/2014, and of "Guidelines", other documents and initiatives related to the topic, including GETFiT</li> </ul>	MIREME GT SPEED+ AFDB Consultant KfW	1 week	
2	Internal review	<ul style="list-style-type: none"> <li>Review of legislation in force and pre-existing studies by sub WG members</li> <li>Presentation of assessments and reviews of legislation in force and pre-existing studies by sub WG members</li> <li>Definition of proposals of measures for the effective implementation and operationalisation of Refit</li> <li>Formulation of proposals of amendments to the existing legislation by sub</li> </ul>	MIREME GT SPEED+ AFDB Consultant KfW	2 weeks	

		WG members and coordination with WG			
3	Interaction of sub WG with WG and MIREME	<ul style="list-style-type: none"> <li>• Submission of sub WG proposals to MIREME</li> <li>• Appraisal of sub WG proposals by MIREME</li> <li>• Discussion between MIREME and sub WG to identify the proposals selected</li> </ul>	GT SPEED+ Other donors working on the theme	2 weeks	
4	Preparation of the draft review of legal instruments	<ul style="list-style-type: none"> <li>• Preparation of the draft / review proposed by the sub WG/WG</li> <li>• Review by MIREME of the new draft Law and of the assessment by WG</li> <li>• Submission and discussion of the new draft Law, by MIREME to other relevant entities of the Executive (as well as Legislative and Judicial if deemed appropriate and/or convenient)</li> </ul>	GT SPEED+ Other donors working on the theme	1 week	
5	Public consultation	<ul style="list-style-type: none"> <li>• Follows the same public consultation steps as in Component 3, above</li> </ul>	MIREME GT SPEED+ Other donors working on the theme	2 weeks	
6	Submission of the instrument to the Cabinet and monitoring the	Follows the same public consultation steps as in Component 3, above	MIREME GT SPEED+	To be defined	

	procedures for approval of the new draft		Other donors working on the theme		
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# Annex 4

## Negotiation and Legal Support to IPPs – Pilot Project

NEGOTIATION AND LEGAL SUPPORT TO IPPS – PILOT PROJECT					
STAGES	ACTIONS	ACTIVITIES	RESPONSIBLE ENTITY	DURATION	OBS.
1	Project Mapping	<ul style="list-style-type: none"> <li>• Identification of projects approved</li> <li>• Selection of elements of review</li> <li>• Identification of projects underway for assistance</li> </ul>	MIREME SPEED+	2 weeks	
2	Internal review	<ul style="list-style-type: none"> <li>• Comprehensive review of projects approved and applicable legal instruments</li> <li>• Comprehensive review of concession contracts</li> <li>• Preparation of a report including the history of projects approved and the guidelines thereof</li> </ul>	MIREME SPEED+	3 weeks	
3	Assistance work	<ul style="list-style-type: none"> <li>• Technical assistance to MIREME team negotiating projects underway,</li> </ul>	MIREME SPEED+	To be defined	

		considering the guidelines prepared under the previous point			
4	Outcomes	<ul style="list-style-type: none"> <li>• Preparation of guidelines for procurement /contracting</li> <li>• Preparation of a model concession / licencing contract</li> <li>• Preparation of a model PPA</li> </ul>	MIREME SPEED+		

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